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HOUSE BILL NO. 402**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Finance
on February 13, 2000)

(Patron Prior to Substitute—Delegate Bennett)

A BILL to amend and reenact § 9-385 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 13.1, consisting of sections numbered 58.1-439.12 through 58.1-439.15, relating to investment and research and development tax credits in tobacco-dependent localities.

Be it enacted by the General Assembly of Virginia:

1. That § 9-385 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 3 of Title 58.1 an article numbered 13.1, consisting of sections numbered 58.1-439.12 through 58.1-439.15 as follows:

§ 9-385. Tobacco Indemnification and Community Revitalization Fund.

A. Money received by the Commonwealth pursuant to the Master Settlement Agreement shall be deposited into the state treasury subject to the special nonreverting funds established by subsection B of this section and by § 32.1-360 and shall be included in general fund revenue calculations for purposes of subsection C of § 58.1-3524 and subsection B of § 58.1-3536.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Tobacco Indemnification and Community Revitalization Fund. The Fund shall be established on the books of the Comptroller. Fifty percent of the annual amount received by the Commonwealth from the Master Settlement Agreement shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes described in this chapter; *however, up to ten million dollars per taxable year may be deposited into the Technology Initiative in Tobacco-Dependent Localities Fund, as created by § 58.1-439.14, each year starting with 2000 and ending in 2009.* Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written authorization signed by the chairman of the Commission or his designee. The Fund shall also consist of other moneys received by the Commission, from any source, for the purpose of implementing the provisions of this chapter.

Article 13.1. Tax credits for Technology Industries in Tobacco-dependent Localities.

§ 58.1-439.12. Tax credit for investing in technology industry in tobacco-dependent localities.

A. For purposes of this section, "tobacco-dependent locality" means those localities that have traditionally economically depended on tobacco and shall be identified by the Tobacco Indemnification and Community Revitalization Commission.

B. For taxable years beginning on and after January 1, 2000, but before January 1, 2010, a taxpayer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of this chapter in the amount equal to fifty percent of the amount invested in an information technology or biotechnology company located in or that will be located in a tobacco-dependent locality not to exceed \$500,000 per taxpayer. The amount of credit allowed shall not exceed the tax imposed for the taxable year. Any credit not usable for the taxable year the credit is allowed may be carried over for the next ten succeeding taxable years. No credit shall be carried back to a preceding taxable year. If a taxpayer that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section. In no event shall more than five million dollars in credits be allowed for any taxable year; however, if credits exceed five million dollars for a taxable year, they shall be allocated by the Department of Taxation on a pro rata basis. If credits are less than five million dollars for a taxable year, the unused amount shall be utilized in the succeeding taxable year in addition to the five million dollars of credit allowed during that year.

C. The tax credit created in this section may be claimed to the extent moneys from the Tobacco Indemnification and Community Revitalization Fund, created in § 9-385, are deposited in to Technology Initiative in Tobacco-Dependent Localities Fund.

D. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders or members, respectively, in proportion to their ownership or interest in such

60 *business entities.*

61 § 58.1-439.13. *Tax credit for research and development activity occurring in tobacco-dependent*
62 *localities.*

63 *A. As used in this section:*

64 *"Eligible company" means a company that is eligible to claim tax credits under this section based on*
65 *criteria, established by the Tobacco Indemnification and Community Revitalization Commission,*
66 *describing the required number of jobs to be created and the investments to be made in*
67 *tobacco-dependent localities.*

68 *"Eligible research and development activity" means qualified research expenses as defined in § 41 of*
69 *the Internal Revenue Code of 1986, 26 U.S.C. § 41, when such expenses are incurred by a taxpayer for*
70 *activity occurring in a tobacco-dependent locality of the Commonwealth.*

71 *"Tobacco-dependent locality" means those localities that have traditionally economically depended on*
72 *tobacco and shall be identified by the Tobacco Indemnification and Community Revitalization*
73 *Commission.*

74 *B. For taxable years beginning on and after January 1, 2000, but before January 1, 2010, a*
75 *taxpayer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6*
76 *(§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of this chapter as set forth in this section. The amount*
77 *of credit earned pursuant to this section shall be equal to fifty percent of the amount expended by a*
78 *taxpayer on an eligible research and development activity during the taxable year.*

79 *C. A taxpayer shall be eligible to claim the credit for the taxable year in which the eligible research*
80 *and development activity occurred. No taxpayer shall be eligible to claim a credit of more than*
81 *\$500,000 per year. The amount of credit allowed shall not exceed the tax imposed for the taxable year.*
82 *Any credit not usable for the taxable year the credit is allowed may be, to the extent usable and subject*
83 *to subsections E and F, carried over for the next ten succeeding taxable years. No credit shall be*
84 *carried back to a preceding taxable year. If a taxpayer that is subject to the tax limitation imposed*
85 *pursuant to this subsection is allowed another credit pursuant to any other section of the Code of*
86 *Virginia, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to*
87 *have first utilized any credit allowed that does not have a carryover provision, and then any credit that*
88 *is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant*
89 *to this section.*

90 *D. In no event shall more than five million dollars in credits be allowed for any taxable year;*
91 *however, if credits exceed five million dollars for a taxable year, they shall be allocated by the*
92 *Department of Taxation on a pro rata basis. If credits are less than five million dollars for a taxable*
93 *year, the unused amount shall be utilized in the succeeding taxable year in addition to the five million*
94 *dollars of credit allowed during that year.*

95 *E. The tax credit created in this section may be claimed to the extent moneys from the Tobacco*
96 *Indemnification and Community Revitalization Fund, created in § 9-385, are deposited in to Technology*
97 *Initiative in Tobacco-Dependent Localities Fund.*

98 *F. Tax credit redemption and transfer.*

99 *If the taxpayer has no state tax liability for two consecutive tax years, the credit amount may be*
100 *redeemable by the Tax Commissioner on behalf of the Commonwealth for seventy-five percent of the*
101 *face value within ninety days after filing the return. If the Commonwealth does not redeem the tax credit*
102 *or upon the taxpayer's election, such tax credit shall be transferable by sale.*

103 § 58.1-439.14. *Technology Initiative in Tobacco-Dependent Localities Fund.*

104 *There is hereby created in the Department of the Treasury a special fund that shall be known as the*
105 *Technology Initiative in Tobacco-Dependent Localities Fund ("Fund"). The Fund shall be composed of*
106 *those moneys forwarded from the Tobacco Indemnification and Community Revitalization Fund as*
107 *provided in § 9-385. The Department of Treasury shall administer and manage the Fund. Moneys in the*
108 *Fund shall be made available for providing tax credits under this article, including redeeming tax*
109 *credits pursuant to § 58.1-439.13 and administrative costs incurred in implementing the provisions of*
110 *this article. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any*
111 *moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert*
112 *to the general fund but shall remain in the Fund. After all eligible tax credits have been claimed, any*
113 *moneys left in the Fund shall revert to the Tobacco Indemnification and Community Revitalization Fund.*

114 § 58.1-439.15. *Tax Commissioner to promulgate regulations.*

115 *Pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.), the Tax Commissioner shall*
116 *promulgate regulations that are necessary or desirable to carry out the provisions of this article,*
117 *including (i) computation, carryover, and rollover of the credits provided under this article, and (ii)*
118 *rules and procedures for redeeming and transferring tax credits under § 58.1-439.13.*